

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAVID FRANCIS BLAKE,

Plaintiff,

VS.

H. ENTERO, *MEDICAL DIRECTOR*;
R. SOLOMAN, *MCD. SERVICES*;
A. MILLER, *NURSING SUPERVISORS*;
E. SIMPSON, *HEALTH CARE ADMIN.*; and
MEDICAL SERVICE'S DOC OF
PENNSYLVANIA,

Defendants.

No. 2:23-cv-604

District Judge Robert J. Colville

Magistrate Judge Maureen P. Kelly

ORDER OF COURT

Before the Court is the Honorable Maureen P. Kelly's Report and Recommendation (ECF No. 11) that was filed in the above-captioned matter on May 3, 2023. Judge Kelly's Report and Recommendation recommends that the claims set forth in the Complaint (ECF No. 9) filed by Plaintiff David Francis Blake, who is proceeding in forma pauperis, be dismissed sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. Specifically, Judge Kelly recommends that all claims against Defendant Medical Service's DOC of Pennsylvania be dismissed with prejudice, and that all other claims be dismissed without prejudice to the filing of an amended complaint. Objections to Judge Kelly's Report and Recommendation were due by May 22, 2023. No objections were filed. Accordingly, this matter is ripe for disposition.

Objections to a magistrate judge's disposition of a dispositive matter are subject to de novo review before the district judge. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). The

reviewing district court must make a de novo determination of those portions of the magistrate judge's report and recommendation to which objections are made. *Id.* Following de novo review, "[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3). The United States Court of Appeals for the Third Circuit has explained that, "even absent objections to the report and recommendation, a district court should 'afford some level of review to dispositive legal issues raised by the report,'" and has "described this level of review as 'reasoned consideration.'" *Equal Employment Opportunity Comm'n v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (quoting *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987)).

Upon reasoned consideration of Plaintiff's Complaint and Judge Kelly's Report and Recommendation in this matter, the Court agrees with the thorough and well-reasoned analysis set forth in Judge Kelly's Report and Recommendation, and the Court accepts and adopts Judge Kelly's Report and Recommendation in its entirety as the opinion of the Court. Plaintiff's claims against Defendant Medical Service's DOC of Pennsylvania are dismissed with prejudice. Plaintiff's remaining claims are dismissed without prejudice to the filing of an amended complaint raising factual allegations as to how each Defendant was personally involved in Plaintiff's alleged constitutional deprivation. Any such amended complaint shall be filed by **December 18, 2023**.

BY THE COURT:

s/Robert J. Colville
Robert J. Colville
United States District Judge

DATED: November 27, 2023

cc: The Honorable Maureen P. Kelly

David Francis Blake
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Kittanning, PA 16201